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8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. AC-2009-36

12 **JOHN VINCENT CRACCHIOLO**
271 Fredericksburg Road
13 Gardnerville, Nevada 89460-6572
Certified Public Accountant Certificate No.
14 CPA 36115

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

21 2. On or about December 3, 1982, the California Board of Accountancy issued Certified
22 Public Accountant Certificate Number CPA 36115 to John Vincent Cracchiolo (Respondent).
23 The Certified Public Accountant Certificate expired on June 30, 2004, and has not been renewed.

24 JURISDICTION

25 3. This Accusation is brought before the California Board of Accountancy (Board),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code unless otherwise indicated.

28 4. Section 490 of the Code states:

1 “A board may suspend or revoke a license on the ground that the licensee has been
2 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
3 of the business or profession for which the license was issued. A conviction within the meaning
4 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
5 contendere. Any action which a board is permitted to take following the establishment of a
6 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
7 been affirmed on appeal, or when an order granting probation is made suspending the imposition
8 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
9 Code.”

10 5. Section 5100 states:

11 "After notice and hearing the board may revoke, suspend, or refuse to renew any permit or
12 certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing
13 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
14 conduct that includes, but is not limited to, one or any combination of the following causes:

15 "(a) Conviction of any crime substantially related to the qualifications, functions and duties
16 of a certified public accountant or a public accountant.

17 ...

18 “(g) Willful violation of ...any rule or regulation promulgated by the board....”

19 “(h) Suspension or revocation of the right to practice before any governmental body or
20 agency.

21 “(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

22 ...

23 “(l) The imposition of any discipline...by...the United States Securities and Exchange
24 Commission...under the Sarbanes-Oxley Act of 2002 or other federal legislation.”

25 6. Section 5063(a)(1) of the Code requires a licensee to report in writing to the Board
26 within 30 days all felony convictions and convictions of any crime related to the qualifications,
27 functions or duties of a licensee or to acts or activities in the course and scope of the practice of
28 public accountancy; or involving theft, embezzlement, misappropriation of funds or property,

1 breach of a fiduciary responsibility, or the preparation, publication, or dissemination of false,
2 fraudulent, or materially misleading financial statements, reports or information.

3 7. Section 5063(a)(3) of the Code requires a licensee to report in writing to the Board
4 within 30 days the cancellation, revocation, or suspension of the right to practice as a certified
5 public accountant before any governmental body or agency.

6 8. Section 5063(b)(3) of the Code requires a licensee to report in writing to the Board
7 within 30 days any notice of the opening or initiation of a formal investigation of the licensee by
8 the Securities and Exchange Commission.

9 9. Section 5063(c)(3) of the Code requires a licensee to report in writing to the Board
10 within 30 days of the entry of the judgment, any judgment against the licensee in any civil action
11 alleging preparation, publication, or dissemination of false, fraudulent, or materially misleading
12 financial statements, reports or information.

13 10. Section 5106 states:

14 "A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to
15 be a conviction within the meaning of this article. The record of the conviction shall be
16 conclusive evidence thereof. The board may order the certificate or permit suspended or revoked,
17 or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the
18 judgment of conviction has been affirmed on appeal or when an order granting probation is made,
19 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
20 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter
21 a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information
22 or indictment."

23 11. Section 5107(a) of the Code states:

24 "The executive officer of the board may request the administrative law judge, as part of the
25 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
26 found to have committed a violation or violations of this chapter to pay to the board all reasonable
27 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
28 The board shall not recover costs incurred at the administrative hearing."

12. Section 5109 provides in pertinent part that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall not deprive the Board of jurisdiction to commence or proceed with a disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

13. Title 16, California Code of Regulations, section 3(a) requires a licensee to notify the Board of any change in his or her address of record within 30 days after the change.

FIRST CAUSE FOR DISCIPLINE

(Conviction)

14. Respondent's license is subject to disciplinary action under sections 490 and 5100(a) in that on or about August 21, 2008, respondent was convicted by plea of guilty a violation of Title 18, United States Code, Section 1505 in the criminal case SA CR No. 07-60(A)-JVS for obstructing proceedings before the Securities and Exchange Commission (SEC). Previously, on or about August 9, 2006, the SEC filed securities fraud charges against respondent for orchestrating a financial fraud perpetrated on the investing public in 2001 and 2002, while he was employed as the Chief Financial Officer at Endocare, an Irvine-based publicly traded medical products company. The underlying criminal conduct included, in pertinent part, that "On January 12, 2004, the SEC took testimony of defendant [respondent] in connection with its investigation into securities violations at Endocare during defendant's employment there. . . During the deposition, the SEC inquired about the circumstances surrounding former Endocare Controller Bill Moore's July 9, 2002 departure from Endocare." The defendant (Endocare's former CFO and COO) testified that Mr. Moore was "going through some personal problems." However, "defendant well knew and willfully omitted that Mr. Moore had raised concerns about Endocare's accounting for a variety of transactions. Mr. Moore informed defendant that, among other things, he did not believe that Endocare's performance for the second quarter of 2002 would meet or exceed Wall Street expectations absent engaging in accounting that Mr. Moore thought would be inappropriate. . . It was these concerns, and not the reasons set forth in defendant's above-referenced testimony, that appeared to be Mr. Moore's true reason for departing Endocare." "Later in the third quarter, Endocare engaged in merger talks with Advanced Medical

1 Systems (AMS). In connection with the diligence AMS was performing on Endocare, AMS
2 requested that Endocare allow it to meet with Mr. Moore. Defendant and Mikus (Endocare's
3 former CEO) refused to provide AMS access to Mr. Moore because they did not want AMS to
4 learn of the concerns Mr. Moore identified in connection with his departure."

5 15. Incorporating by reference the allegations in paragraph 14 above, respondent's
6 Certified Public Accountant certificate is subject to discipline under Code sections 490 and
7 5100(a) in that the referenced felony conviction by guilty plea is for a crime substantially related
8 to the qualifications, functions and duties of a CPA within the meaning of Board Rule 99.

9 SECOND CAUSE FOR DISCIPLINE

10 (Suspension or Revocation of Right to Practice)

11 16. Respondent's license is subject to disciplinary action under section 5100(h) in that on
12 or about January 26, 2009, the SEC issued an Order Instituting Administrative Proceedings
13 pursuant to Rule 102(e), Release No. 59295, Accounting and Auditing Enforcement Release No.
14 2924, Administrative Proceedings File No. 3-13349 against respondent. The Order suspended
15 respondent from appearing or practicing before the SEC as an accountant. Respondent agreed to
16 the Order without admitting or denying the findings except as to the Commission's jurisdiction
17 over him and the subject matter of the proceedings, and the findings contained in Section III of
18 the Order, which were admitted. Section III of the Order referenced allegations of the SEC
19 complaint that respondent, in 2001 and 2002, engaged in securities fraud by overstating
20 Endocare's revenue and income by booking false sales, engaging in improper revenue recognition
21 practices, and improperly understating or delaying the recognition of expenses in order to inflate
22 Endocare's earnings. The Order disclosed that a final judgment was entered on January 13, 2009
23 in the SEC's civil case against respondent, requiring respondent to pay \$60,715 in disgorgement
24 of ill-gotten gains while participating in the fraud, and \$10,378.69 in prejudgment interest, and a
25 \$50,000 civil money penalty.

26 17. Incorporating by reference the allegations in paragraph 16, above, respondent's
27 Certified Public Accountant certificate is subject to discipline for unprofessional conduct under
28

1 Code section 5100(h) in that respondent was suspended by the SEC from appearing or practicing
2 before the SEC as an accountant.

3 THIRD CAUSE FOR DISCIPLINE

4 (Imposition of Discipline by SEC)

5 18. Incorporating by reference the allegations in paragraph 16 above, respondent's
6 Certified Public Accountant certificate is subject to discipline under Code section 5100(l) in that
7 respondent engaged in unprofessional conduct by reason of the imposition of discipline on
8 respondent by the SEC under the Sarbanes-Oxley Act of 2002 or other Federal legislation.

9 FOURTH CAUSE FOR DISCIPLINE

10 (Reportable Event for the SEC Opening an Investigation)

11 19. Respondent's license is subject to disciplinary action under section 5063(b)(3) in that
12 respondent failed to timely report to the Board, the SEC's opening of a formal investigation into
13 his role in the Endocare matter. Specifically, the SEC's civil complaint was filed in the U.S.
14 District Court on August 9, 2006, yet respondent failed to report the event to the Board until
15 sending a cover letter dated May 26, 2009, in response to the Board's Enforcement Division's
16 inquiry in the matter.

17 20. On January 13, 2009, a final judgment was entered against respondent in the civil
18 action entitled *Securities and Exchange Commission v. Paul W. Mikus, et al.*, Civil Action
19 Number SACV06-734 JVS (MLGx), in the United States District Court for the Central District of
20 California. In response to the Enforcement Division's inquiry into the matter, respondent
21 reported the judgment to the Board under a cover letter dated May 26, 2009. However, the
22 reporting occurred more than 30 days after the final judgment.

23 21. On January 26, 2009, the SEC issued in Accounting and Auditing Enforcement,
24 Release No. 2849 dated January 26, 2009, which disclosed the suspension of respondent's right to
25 practice before the SEC as an accountant. In response to the Enforcement Division's inquiry in
26 the matter, respondent reported the suspension to the Board under cover letter dated
27 May 26, 2009. The reporting, however, occurred more than 30 days after the issuance of Release
28 No. 2849.

1 22. Incorporating by reference the allegations in paragraphs 18-20, above, respondent's
2 Certified Public Accountant certificate is subject to discipline under Code section 5063(b)(3) in
3 that respondent failed to report in writing to the Board any notice of the opening or initiation of a
4 formal investigation of the licensee by the SEC within 30 days of the date the licensee had
5 knowledge of the event.

6 FIFTH CAUSE FOR DISCIPLINE

7 (Reportable Event for Entry of Judgment in a Civil Action)

8 23. Incorporating by reference the allegations in paragraphs 18-20 above, respondent's
9 Certified Public Accountant certificate is subject to discipline under Code section 5063(c)(3) in
10 that respondent failed to report in writing to the Board within 30 days of the entry of the
11 judgment, any judgment against the licensee in any civil action alleging preparation, publication,
12 or dissemination of false, fraudulent, or materially misleading financial statements, reports or
13 information.

14 SIXTH CAUSE FOR DISCIPLINE

15 (Reportable Event for Suspension of Right to Practice Before Any Governmental Agency)

16 24. Incorporating by reference the allegations in paragraphs 18-20 above, respondent's
17 Certified Public Accountant certificate is subject to discipline under Code section 5063(a)(3) in
18 that respondent failed to report in writing to the Board the suspension of his right to practice
19 before the SEC as an accountant, within 30 days of the date the licensee had knowledge of the
20 event.

21 SEVENTH CAUSE FOR DISCIPLINE

22 (Reportable Event for a Felony Conviction of a Crime Related to the Qualifications, Functions or
23 Duties of a Certified Public Accountant)

24 25. Respondent's license is subject to disciplinary action under section 5063(a)(1) in that
25 respondent failed to timely report to the Board, within 30 days of acquiring knowledge of the
26 event, his felony conviction of a crime related to the qualifications, functions, or duties of a
27 certified public accountant. Although respondent suffered the conviction on August 21, 2008, he
28

1 failed to report the event to the Board until sending a cover letter dated May 26, 2009, in response
2 to the Board's Enforcement Division's inquiry in the matter.

3 26. Incorporating by reference the allegations in paragraphs 13 and 24, above,
4 respondent's Certified Public Accountant certificate is subject to discipline under Code section
5 5063(a)(1) in that respondent failed to timely report in writing to the Board his felony conviction
6 of a crime substantially related to the qualifications, functions or duties of a Certified Public
7 Accountant.

8 EIGHTH CAUSE FOR DISCIPLINE

9 (Notification of Change of Address)

10 27. Respondent's license is subject to disciplinary action under Title 16, California Code
11 of Regulations, section 3, in conjunction with Code section 5100(f), in that he failed to notify the
12 Board of a change of address within 30 days of the change. When the Enforcement Division
13 contacted respondent regarding the above-mentioned reportable events, the letter dated
14 April 27, 2009, which was mailed to respondent's address of record, was returned as
15 "Undeliverable as Addressed Unable to Forward."

16 28. Incorporating by reference the allegations in paragraph , above, respondent's
17 Certified Public Accountant certificate is subject to discipline under Title 16, California Code of
18 Regulations, section 3, in conjunction with Code section 5100(f) (violation of Board regulations),
19 in that he failed to notify the Board of a change of his address within 30 days of the change.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

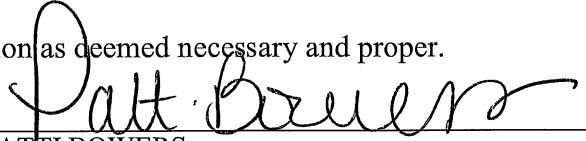
1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number CPA 36115, issued to John Vincent Cracchiolo.

2. Ordering John Vincent Cracchiolo to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

DATED:

December 17, 2009


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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